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IN THE

Supreme Court of the United States

.....Term, 1973

No. 73-675

JAMES A. RUTH,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

STANLEY W. GREENFIELD, ESQ.,
Counsel for Petitioner,
412 Carlton House,
Pittsburgh, Pennsylvania 15219,
(412) 281-8801.

BATAVIA TIMES, APPELLATE COURT PRINTERS,
EDWARD W. SHANNON, REPRESENTATIVE,
1701 PARKLINE DR., PITTSBURGH, PA. 15237
412-881-7463

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The Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit entered in the above case on September 20, 1973 which affirmed the District Court's denial of Petitioner's Motion for a New Trial.

Opinions Below

The District Court for the Western District of Pennsylvania denied Petitioner's Motion for New Trial by opinion (Appendix pp. 7-9). The Third Circuit Court of Appeals affirmed by order (Appendix pp. 10-11).

Jurisdiction

The jurisidction of this Court is invoked under 28 U. S. C. 1254 (1).

Questions Presented

Can a defendant stand convicted on an indictment charging him with forcing his employer to pay wages for "imposed, unwanted and superfluous "services" in violation of the Hobbs Act, 18 U. S. C. 1951 where the Trial Court:

1. Charged the jury, over objection, "it is not proper to obtain a labor objective by force, violence, or fear";

2. Charged "there is nothing in Hobbs that protects unions or union people acting under the guise or the apparent pretense of a union contract in attempts to get personal property through threats of force or violence";

3. And specifically refused after request of defense counsel to define "wrongful" conduct as used in the Hobbs Act in accordance with the holding of *U. S. v. Caldes,* 457 F2d 74 (9th Cir. 1972), approved by this Court in *U. S. v. Enmons,* 409 U. S. 946, 93 S. Ct. 1007 (1973), or that violence perpetrated in the name of a legal labor objective is not wrongful conduct within the meaning of Hobbs.

Statement

Petitioner was convicted after a jury trial on a single count of a multiple count indictment charging him, and two others, with conspiracy to violate the Hobbs Act, by extorting wages for Ironworkers, and as to the Petitioner, in two other substantive counts for attempting to extort wages for Ironworkers in violation of the Hobbs Act. Petitioner was a Job Foreman and a member of Local 348 of the International Association of Bridge, Structural and Ornamental Ironworkers Union, AFL-CIO, in the construction

of the Pennzoil Oil Refinery at Rouseville, Pennsylvania during part of the period alleged in the indictment from September 1, 1970 through June 14, 1971. The principal contractor on the job and the essential complainant in this matter was Refractory Construction Corporation, of Oklahoma City, Oklahoma, which had no prior experience in Western Pennsylvania in connection with labor jurisdictional claims in the construction of oil refineries. The events alleged in the indictment grew out of the contention by members of Local 348 that certain work, particularly metal scaffolding, was within the jurisdiction of Ironworkers to erect even if used by other crafts. At trial the government attempted to prove that all the Defendants named in the indictment conspired to induce representatives of Refractory Construction Corporation to hire Ironworkers whose work was alleged to be "unnecessary and superfluous", in violation of the Hobbs Act. The other Defendants, all acquitted, were William Knapp, the Business Agent, and Daniel R. Carr, another Job Foreman from Local 348. Petitioner was convicted of a single substantive count which charged him with firing a pistol into the desk of Buddy Raymond, a Refractory Construction Corporation Supervisor, for the purpose of inducing the payment of unwanted wages to other Ironworkers, in violation of of the Hobbs Act. Petitioner was acquitted of all remaining counts against him along with the other Defendants. Fairly characterized the evidence established:

1. That no person for Refractory Contractors, or any other person, was ever physically abused or harmed by any member of Local 348; and

2. That any alleged extortion for wages was not for personal gain by Petitioner, Ruth, or the other Defendants, but for wages of third party Ironworkers.

After the prosecution concluded its case, Petitioner moved to dismiss the action for among other reasons because any alleged violence took place in furtherance of a legal labor objective, *i.e.* Ironworkers jurisdiction over scaffolding as set forth in its contract, which if true, under the holding of *Caldes v. U. S.*, 457 F2d 74 (9th Cir. 1972), was not wrongful conduct as defined in Hobbs. The Court refused and later charged the jury that "it is not proper to obtain a labor objective by force, violence, or fear" (T.15), and "there is nothing in Hobbs that protects unions or union people acting under the guise or the apparent pretense of a union contract in attempts to get personal property through threats of force or violence" (T. 19). Counsel specifically excepted and asked the Court to charge that conduct, even if violent, is not wrongful as Hobbs requires it to be for conviction, if the violence is perpetrated for a legal labor objective. *Caldes v. U. S., supra.* In refusing, the Trial Court responded "I understand your point. I refuse to go that far." (T. 31).

After his conviction, on the single count, Petitioner was sentenced to one year probation by Judge Gerald Weber and fined Three Hundred ($300.00) Dollars. The Motion for New Trial was denied and an appeal followed to the Third Circuit. After briefing to that Court was complete, this Court's decision in U. S. v. Enmons, 409 U. S. 946, 93 S. Ct. 1007 (1973) was decided on February 22, 1973. Petitioner brought this to the Circuit's attention in support of his contention already briefed that the Hobbs Act does not reach violence perpetrated as part of a plan to achieve a legal labor objective, for which *Caldes v. U. S., supra* had already been cited. After oral argument the Circuit affirmed by order, from which, this Petition followed.

Reasons for Granting the Writ

On the basis of the charge Defendant could have been convicted of conduct which is not a crime under Federal law. Throughout trial and as a request for charge, Defendant contended that low level violence in the furtherance of a legal labor objective was not a federally criminal or punishable act and was not wrongful conduct as defined or contemplated by Congress in the Hobbs Act, and that *U. S. v. Caldes, supra* as held. The District Court refused to follow *Caldes,* stating "I understand your point but refuse to go that far". (T. 31).

This Court in *Enmons, supra* approved the holding in *U. S. v. Caldes,* that violence perpetrated in the furtherance of legal labor objectives is not wrongful conduct within the the meaning of that term as used to define extortion in the Hobbs Act, 18 U. S. C. 1951.

Charging the jury as the Trial Court did, that "it is not proper to obtain a labor objective by force, violence, or fear" (T. 15) and that "there is nothing in Hobbs that protects unions or union people acting under the guise or the apparent pretense of a union contract in attempts to get personal property through threats of force or violence" (T. 19), is patently in contradiction of *Caldes* and as it subsequently turned out, in contradiction of *Enmons.* The Trial Court thus made it impossible to determine whether the verdict was predicated on the possible erroneous jury assumption that all violence, even in the name of a legal labor objective, was wrongful, which *Enmons* and *Caldes* manifestly hold is not the case, or whether the verdict was based on the possible assumption that such violence was for the purpose of obtaining wages, which were imposed, unwanted, and superfluous as charged in the indictment, which

conduct remains a violation of the Hobbs Act. *Enmons, supra, U. S. v. Green,* 350 U. S. 415 (1956), and *U. S. v. Kemble,* 198 F2d 889 (3rd Cir. 1952). Thus, Defendant could plainly have been convicted on conduct not even within federal jurisdiction, and thus not a criminal act under federal law, a circumstance which if true, is obviously in contravention of his constitutional right to due process.

Conclusion

For the reasons set forth above, it is respectfully submitted that this Petition for Writ of Certiorari should be granted.

STANLEY W. GREENFIELD,
Attorney for Petitioner.

APPENDIX

Memorandum Opinion

IN THE

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

vs.

JAMES A. RUTH.

Criminal Action No. 72-40.

WEBER, *J.* November 2, 1972

Defendant and two others were indicted on a multi-court indictment under the Hobbs Act [18 U. S. C. 1951]. The first count was a conspiracy count, the remaining counts charged overt acts by various individuals defendants. All defendants were acquitted of the conspiracy count, the other defendants were acquitted of the overt acts charged against them, but the defendant Ruth was found guilty of one count of an overt act.

While all of the acts charged involved the use of strong language to accomplish the alleged extortion, the particular count upon which defendant Ruth was found guilty also involved the display of a hand gun. Defendant's counsel argues that the statute does not apply to "low level" violence. It was argued to the jury that the language used

by all defendants toward their employer was the type of rough talk that is common in the industry and did not constitute wrongful use of actual or threatened force. With respect to the other counts of the indictment the jury apparently agreed with him. The evidence in support of the count on which defendant was found guilty involved the display and firing of the hand gun. Defendant argues that the evidence is insufficient to prove that the use of the hand gun was related to any threats of force, violence or fear directed toward the defendant's employer.

While the evidence does not sustain a finding that the threat of force or violence was effected solely by the use of the hand gun, it is clear that the display of the gun and the demonstration of its firing power by the defendant formed an integral part of the general intimidation which was being exercised by all defendants upon their employer. The evidence amply supports the finding that money in the form of wages for unnecessary or unperformed labor was obtained from the employer by the use of threatened force.

While the jury would not accept the threat of force from words alone, they properly accepted it when the language was accompanied by defendant's display of a deadly weapon in his possession at the time.

Defendant argues that perjured testimony before the grand jury invalidates the indictment. But is was clearly shown that the perjured testimony did not relate to any witness or any facts under the count of the indictment for which defendant Ruth was found guilty. Each count of the indictment stands alone as a separate indictment. *Dunn v. United States*, 284 U. S. 390, [1932].

Memorandum Opinion

We find no basis for defendant's claim of prejudice on a denial of his motion for change of venue, or the composition of the jury, or the failure to sequester the jury.

The court's review of certain testimony at the specific request of the jury was in our opinion well within the permissible area of judicial discretion.

We will, therefore, deny the Motion for New Trial of defendant James A. Ruth.

ORDER

AND NOW, this *2nd day of November, 1972,* upon hearing oral argument and briefs of counsel, it is ORDERED that the motion of Defendant James G. Ruth for New Trial be DENIED.

GERALD J. WEBER,
United States District Judge.

cc: Richard L. Thornburgh, United States Attorney,
633 U. S. Post Office & Courthouse,
Pittsburgh, Pennsylvania 15219.

Stanley W. Greenfield, Esq.,
412 Carlton House,
Pittsburgh, Pennsylvania 15219.

Thomas A. Bergstrom, Esq., Special Attorney,
United States Department of Justice,
Chatham Center Office Bldg.,
Pittsburgh, Pa. 15219.

Judgment Order

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 72-2094.

UNITED STATES OF AMERICA,

Appellee,

v.

JAMES A. RUTH,

Appellant.

Appeal From the Judgment and Sentence of the United States District Court for the Western District of Pennsylvania at No. 72-40 Criminal.

Submitted Under Third Circuit Rule 12(6) Monday April 9, 1973.

Before: Adams and Gibbons, *Circuit Judges,* and Joseph S. Lord, III, *District Judge.*

Richard L. Thornburgh, United States Attorney, Blair A. Griffith, First Assistant U. S. Attorney, Kathleen Kelly Curtin, Assistant U. S. Attorney, 633 U. S. Post Office & Courthouse, Pittsburgh, Pa. 15219, Attorneys for Appellee.

Greenfield & Minsky, By: Stanley W. Greenfield, 412 Carlton House, Pittsburgh, Pa. 15219, Attorney for Appellant.

Judgment Order

After considering the appellant's contentions' that (1) the evidence did not reflect that the appellant fired a weapon into Raymond's desk for the purpose of extorting money from Raymond in the form of wages or any other thing of value; (2) that the indictment against the appellant was obtained by the use of perjured testimony; (3) that the court erred in giving the jury its personal synopsis of the testimony in response to an inquiry by it, over objection of counsel; and (4) whether the Hobbs Act reaches violence perpetrated as part of a plan to achieve a legal labor objective, we conclude such contentions, on this record, are without merit, and it is

ORDERED AND ADJUDGED that the judgment of the district court is affirmed.

BY THE COURT,
ARTHUR M. ADAMS,
Circuit Court.

Attest:

THOMAS P. FINN,
Clerk.

Dated: Sep. 20, 1973.

SUPREME COURT, U. S.
FEB 6 1974
MICHAEL RODAK, JR., CLERK

No. 73-675

In the Supreme Court of the United States

OCTOBER TERM, 1973

JAMES A. RUTH, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D. C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-675

JAMES A. RUTH, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner contends that the trial court's instructions constituted reversible error under this Court's decision in *United States* v. *Enmons*, 410 U.S. 396.

Following a jury trial in the United States District Court for the Western District of Pennsylvania, which took place before this Court's decision in *Enmons*, petitioner was convicted of extortion in violation of the Hobbs Act, 18 U.S.C. 1951. He was sentenced to one year's probation and fined $300.

The court of appeals, after the decision in *Enmons*, affirmed (Pet. App. 10-11).

1. The indictment, which charged petitioner and two others with Hobbs Act violations, contained five counts: the first count charged a conspiracy, and the remaining four counts charged substantive violations.[1] Petitioner was convicted on count four, which charged in pertinent part:

> [T]hat on or about May 1, 1971, at the site of the Pennzoil Refinery Construction project, . . . JAMES A. RUTH, the defendant herein, did knowingly, willfully and unlawfully obstruct, delay and affect and attempt to obstruct, delay and affect commerce . . . by extortion, as that term is defined in and by Section 1951 of Title 18, United States Code; that is to say, the defendant did obtain property in the form of wages for *imposed, unwanted, superfluous* and *fictitious* services by Ironworkers of Local 348, in connection with the furnace work and fireproofing at the construction project, from Buddy L. Raymond, an agent and representative of Refractory Construction Corporation with his consent induced by the wrongful use of actual and threatened force, violence, and fear, in that the defendant did threaten force and violence against the person of Buddy L. Raymond, by firing six (6) bullets into his, Raymond's desk, unless and until the Refractory Construction Corporation paid said wages. [Emphasis supplied.]

---

[1] Co-defendants Knapp and Carr were acquitted on all counts.

As we show within, the indictment thus charged an offense, and petitioner was convicted of an offense punishable under the Hobbs Act as interpreted in *Enmons*.

2. In 1970, Refractory Construction, Inc. (RCI) a Tulsa, Oklahoma building contractor, entered into an agreement with a primary contractor, Foster Wheeler, Inc., to perform certain fireproofing work at a refinery in Rouseville, Pennsylvania (Ray. 2-4).[2] Work began in September or October and was suspended in mid-December because of the cold weather (Ray. 5-9). During this period, RCI had completed 60% of the fireproofing work required by its contract and 65% of its structural steel work (Ray. 9). No more than four ironworkers had been employed at any time up to the suspension of operations (Ray. 9-10).

In March 1971, RCI resumed its operations at the refinery job. The company sent David Myers to supervise the work. In April, Myers telephoned Buddy Raymond, the company's general field superintendent, expressing fear in regard to his position as job superintendent. Two days later, Myers reported to Raymond that he intended to leave the job. Raymond persuaded Myers to stay until he arrived at the job site (Ray. 10-12).

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[2] We are lodging with the Clerk relevant portions of the trial transcript: three separately paginated volumes consist of transcripts of the testimony of Buddy L. Raymond ("Ray.") and petitioner ("Ruth") and the court's closing instructions ("T").

The following Sunday, Raymond met with Myers at a motel near Rouseville. Myers told him that he had been threatened by petitioner and co-defendant Daniel Carr, who were members of the ironworker's local union (Ray. 12-13); he said that threats had been made of physical harm and property damage by dynamiting (Ray. 14). Examining the payroll records, Raymond noticed that seven ironworkers, including a "general foreman" (Carr) and a crew foreman (petitioner) (Ray. 23), had been employed, although that many ironworkers were not needed. Myers explained that Knapp, the business agent of the Union, had required the surplus hirings (Ray. 14, 24). Finally, Myers told Raymond that the ironworkers had demanded a letter authorizing them to do all of the scaffolding work. He cautioned Raymond to beware because petitioner and Carr had threatened "to cave your face in when you walked through the door" (Ray. 14-15).

The next morning, at the company's office trailer, Raymond introduced himself to Carr and asked what the trouble was all about. Carr declined to discuss the matter and left (Ray. 16-17). Less than an hour later all of the ironworkers entered the office trailer, and Carr asked Raymond what he had meant when referring to "trouble" (Ray. 18). Raymond replied that Myers had reported to the general office in Tulsa that he was having problems on the job. Carr stated that they should have beaten Myers (Ray. 19). He also said to petitioner, referring to Raymond, that "we will just cave his face in to break him in right"

(Ray. 18). In this tense atmosphere, another ironworker demanded written authorization for ironworkers to do the scaffolding work. Despite the fact that ironworkers generally were not entitled to the scaffolding work, and 90% of the scaffolding had already been completed, Raymond, acting out of fear, prepared a letter giving the ironworkers exclusive right to perform all labor associated with the scaffolding (Ray. 20-23).

On the next day one of the surplus ironworkers quit. Over Raymond's objection, he was required to hire a replacement sent by the business agent (Ray. 24-25). Notwithstanding the surplus of ironworkers, the job they were expected to perform was not being done on schedule, causing a backup of other operations that could not begin until the structural steel work had been completed (Ray. 25). In particular, Carr and petitioner, although drawing full pay, did no work at all (Ray. 101-102).

On Friday, April 19, Raymond was seated behind a desk in the office trailer when petitioner entered the trailer in an angry mood. Declaring that "Nobody here is going to mess with the ironworkers * * *" (Ray. 30), petitioner removed a revolver from his pocket and fired six shots into the desk (Ray. 30, Gov't. Exh. 4). He reloaded the gun, fired once, experienced a misfire, and then prepared to leave as Carr entered the trailer. Petitioner complained to Carr that the gun was unreliable (Ray. 30-31). Petitioner displayed a permit for a gun and said to Raymond, "See, I can kill you if I want to."

Petitioner also told Raymond, "I could get nine ironworkers in here as witnesses that you pulled a knife on me" (Ray. 36).

As a result of continuing intimidation and delays (Ray. 37), RCI elected not to complete its contractual obligation and closed its operation. Another firm completed the work (Ray. 109). Under normal working conditions, RCI would have employed from two to four ironworkers, who would have performed the amount of work remaining to be done after the resumption of work in less than ten days at a cost of no more than $2,500. Instead, because of the fear instilled in the RCI superintendents, RCI had hired as many as eight ironworkers and had a net payroll charge of $20,000 attributed to the ironworkers (Ray. 45-52). The incident involving petitioner's firing of his weapon into Raymond's desk formed the basis for the charge upon which he was convicted.

3. Testifying in his own behalf, petitioner denied ever threatening Myers or Raymond and stated that he had been sent to the RCI site by Knapp, the Union's business agent, in response to a request by RCI for manpower. According to petitioner, after Knapp had examined the amount of work to be done, he informed Myers that more help was needed and sent petitioner to serve in the capacity of foremen of one of two ironworkers' crews (Ruth 4-7). Petitioner denied being present at the Monday morning episode when the scaffolding authorization letter was prepared (Ruth 17). His version of the revolver

incident was that, having heard that Raymond was interested in purchasing a gun, petitioner offered to sell him one for five dollars. Raymond sought assurances that it would work and invited petitioner to fire shots into his desk, indicating that the desk was old and could not be harmed much more. After petitioner fired the weapon successfully four times, Raymond made the purchase; however, a few days later petitioner was compelled to renege on the deal, retrieve the gun, and return it to his supplier because he learned that the weapon was stolen (Ruth 19-21).

4. The evidence established that petitioner used force and violence to compel RCI to pay for unneeded and superfluous services.[3] Accordingly, the conduct charged as criminal falls within the proscription of the Hobbs Act. See *United States* v. *Green*, 350 U.S. 415; *United States* v. *Enmons*, *supra*, 410 U.S. at 408. The sole question presented in this petition is whether the trial court's pre-*Enmons* instructions so far departed from the *Enmons* rationale as to permit the jury to convict petitioner if the use of force was employed only to achieve legitimate labor ends.

The instructions petitioner complains of are that " 'it is not proper to obtain a labor objective by force, violence, or fear' " and that " 'there is nothing in Hobbs that protects unions or union people acting under the guise or the apparent pretense of a union contract in attempts to get personal property through

[3] Although at trial petitioner defended on the ground that he made no threat at all, that claim is not raised in the petition.

threats of force or violence' " (Pet. 5). In the circumstances of this case, such instructions did not constitute reversible error. The second instruction is correct in that it points out that a pretense or guise of a legitimate end, as opposed to a valid labor objective, does not exclude punishment under the Hobbs Act. The first instruction, while not anticipating *Enmons*, could not have led the jury into error, since the indictment, which was both explained to the jury and sent with the jury to the jury room (T. 9), clearly alleged extortion of "wages * * * for *imposed, unwanted, superfluous and fictitious services*" (emphasis added; T. 21). Several times during its instruction the court also referred to violence to obtain "wages which are not rightfully due" (T. 14, 27-28). The Court has recently reaffirmed the settled proposition "that a single instruction to a jury may not be judged in artificial isolation, but must be viewed in the context of the overall charge," *Cupp* v. *Naughten*, C.A. 9, No. 72-1148, decided December 4, 1973, slip op. 6.[4] We submit that under the facts of this case the jury was adequately instructed and found the facts alleged in the indictment to have been proved.

Unlike the situations in *United States* v. *Caldes*, 457 F. 2d 74 (C.A. 9), and in *Enmons*, *supra*, relied upon by petitioners, the evidence in this case contains no indication that petitioner or his labor union

[4] The trial court here repeated this admonition, stressing that the jury should not "single out one instruction alone as stating the law, but consider all of the instructions together and as a whole" (T. 2).

was pursuing any lawful labor objective when he fired the pistol at Raymond's desk, or that this incident was otherwise related to a course of conduct directed at achieving a legitimate benefit for the local union. Indeed, petitioner's brief makes no reference to any lawful labor objective that might have prompted the shooting by petitioner, and petitioner's own explanation at trial for this conduct was wholly unrelated to labor matters.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

FEBRUARY 1974.

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